

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
VANDALIA MEDIA PARTNERS 2, LLC	)	MB Docket No. 21-118
Application for Renewal of License	)	File No. 0000115315
Station WJEH (AM), Gallipolis, OH	)	Facility ID No. 70692

To: Marlene H. Dortch, Secretary  
Attn: Administrative Law Judge Jane Hinckley Halprin

**ENFORCEMENT BUREAU’S RESPONSE TO VANDALIA MEDIA PARTNERS 2,  
LLC’S REQUEST TO WITHDRAW NOTICE OF APPEARANCE AND  
FOR DISMISSAL OF RENEWAL APPLICATION**

1. On June 1, 2020, Vandalia Media Partners 2, LLC (VMP 2) filed the above-captioned application for renewal of its license for Station WJEH(AM). On April 2, 2021, the Media Bureau designated this application for hearing before the Presiding Judge to determine, *inter alia*, whether the captioned application should be granted.<sup>1</sup> On May 17, 2021, VMP 2, through its counsel, requested that its previously-filed notice of appearance in this hearing be withdrawn and that its pending renewal application be dismissed.<sup>2</sup> In this Request, VMP 2 affirmed that it “will not be participating in this hearing.”<sup>3</sup> While not styled as such, the Enforcement Bureau (Bureau) views VMP 2’s Request as a motion to terminate the hearing proceeding. As set forth herein, the Chief, Enforcement Bureau, through her attorneys, does not

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<sup>1</sup> See Hearing Designation Order and Notice of Opportunity for Hearing, MB Docket No. 21-118 (MB, rel. Apr. 2, 2021) (HDO).

<sup>2</sup> See Request to Withdraw Notice of Appearance and Request for Dismissal of Renewal Application (May 17, 2021) (Request).

<sup>3</sup> *Id.* at 1.

object to the dismissal of VMP 2's renewal application with prejudice and the termination of this proceeding.

2. Pursuant to section 1.221(c) of the Commission's rules, when an application has been designated for hearing, if the applicant fails to file a written appearance stating that it will appear on the date fixed for the hearing and present evidence on the issues specified in the hearing designation order, that application "will be dismissed with prejudice for failure to prosecute."<sup>4</sup> The purpose of section 1.221(c) is self-evident – if the applicant, as the entity with the burden of proof, does not commit to appearing at the hearing and presenting evidence on the designated issues, there is no need for a hearing. Indeed, there is no reason for the Bureau, the Office of the Administrative Law Judge, and/or the Commission to expend valuable time and resources adjudicating the merits of an application that the applicant has waived its right to prosecute. Accordingly, the application will be dismissed with prejudice.

3. VMP 2's decision to withdraw its notice of appearance and not to participate in the hearing has the same practical effect as if it had initially failed to file a written notice of appearance – *i.e.*, VMP 2 has waived its right to prosecute its renewal application and the application therefore should be dismissed with prejudice.<sup>5</sup> Indeed, VMP 2 has affirmatively requested that the renewal application be dismissed.<sup>6</sup> As a result, the Bureau does not oppose

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<sup>4</sup> 47 CFR § 1.221(c). *See also* HDO at 8, para. 29.

<sup>5</sup> *See, e.g., Action, S.A. v. Marc Rich & Co., Inc.*, 951 F.2d 504, 507-08 (2d Cir. 2008) (affirming that defendant who had initially entered an appearance, but then admitted "he would not appear, either for discovery or for trial" had defaulted on his right to prosecute his case); *see also Metro Two-Way LLC*, WTB Docket No. 18-133, *Order*, 18M-04 (ALJ, rel. June 11, 2018) (dismissing pending application with prejudice after applicant failed to signal intent to participate); *Acumen Communications*, WTB Docket No. 17-17, *Order*, FCC 17M-20 (ALJ, rel. Apr. 10, 2017) (same).

<sup>6</sup> Request at 1.

dismissal of VMP 2's renewal application for Station WJEH(AM) with prejudice and the concurrent termination of the hearing proceeding.

Respectfully submitted,

Rosemary C. Harold  
Chief, Enforcement Bureau

/s/ Pamela S. Kane

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May 18, 2021

**CERTIFICATE OF SERVICE**

Pamela S. Kane certifies that she has, on this 18th day of May, 2021, sent copies of the foregoing “ENFORCEMENT BUREAU’S RESPONSE TO VANDALIA MEDIA PARTNERS 2, LLC’S REQUEST TO WITHDRAW NOTICE OF APPEARANCE AND FOR DISMISSAL OF RENEWAL APPLICATION” via email to:

The Honorable Jane H. Halprin  
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